necessary incident to every well regulated port, without which commerce and navigation would be subjected to great inconveniences and exposed to vexations and constant peril. Conveniences of this kind are wanted both at the port of departure and of entry, and the expenses paid at both are everywhere regarded as properly chargeable as expenses of the voyage. Such erections are indispensably necessary for the safety and convenience of commerce and navigation, and those who take berths alongside of them to secure those objects derive great benefit from their use. And experience supports the proposition, and shows to a demonstration that the contract of a wharfinger appertains to the pursuit of commerce and navigation. Standard authorities as well as reason, principle, and the necessities of commerce, support the theory that the contract for wharfage is a maritime contract, which in the case supposed, gives to the proprietor of the wharf a maritime lien on the ship or vessel for his security; "viewed in the light of these considerations, it is clear that a contract for the use of a wharf by the master or owner of a ship or vessel is a maritime contract, and, as such, that it is cognizable in the admiralty; that such a contract being one made exclusively for the benefit of the ship or vessel, a maritime lien in the case supposed, arises in favor of the proprietors of the wharf, against the vessel, for payment of reasonable or customary charges in that behalf for the use of the wharf, and that the same may be enforced by a proceeding *in rem* against the vessel, or by a suit *in personam* against the owner." *Johnson* v. *McDonough*, Gilpin 101; *The Phœbe*, Ware 265; *The Kate Tremain*, 5 Ben. 60; *The Maggie Hammond*, 9 Wall. Jr. 435; *Dalvie* v. *Booth*, 2 Gall. 398; *Gardiner* v. *Ship New Jersey*, 1 Pet. Adm. 223, per Judge STORY; *Bark Alaska*, 3 Ben. 391; *Hoburt* v. *Drogan*, 10 Pet. 108; *The Mercer*, 1 Sprague 284; *The Ann Ryan*, 7 Ben. 20; Dunlop's Adm. 65; Abbott's Ship, 423; 2 Conk. Adm. 515. But see *The Barge John M. Welch*, 9 Ben. 507. As to liens under a statute, see *The Virginia Rulon*, 13 Blatch. 519; *The Lottawanna*, 21 Wall.. 558; *The Steamer St. Lawrence*, 1 Black 529.

CHARLES BURKE ELLIOTT.

St. Louis.

Supreme Court of Michigan.

WOOD v. LOSEY.

An infant sued for the price of goods does not have the burden of showing that they were not necessaries. The plaintiff cannot make out his case without showing that the goods purchased were necessaries, notwithstanding that defendant assumes the burden of showing them not to be necessary.

An infant sued for the price of a horse sold to him showed that his sole business was to carry on his mother-in-law's farm for one-third of the produce, and that she was to furnish all the teams, tools and implements: *Held*, that this showed that the horse was not a "necessary" for which he was liable; and it was error to give the jury to understand that it was the necessity of the horse to the farming business, instead of to his part in it, that fixed his liability.

ERROR to Jackson circuit.

Hammond, Barkworth & Smith, for plaintiff.

A. B. Haynes, for defendant and appellant.

The opinion of the court was delivered by

CAMPBELL, J.—Defendant was sued for the price of a horse sold him by Emery Wood, a brother of plaintiff, who claimed as assignee. The suit was brought before a justice while the defendant was an infant, and this appears of record. He was still an infant when the judgment rendered against him by the justice was appealed. Judgment was rendered against him also in the circuit court for Ingham county. It appeared that defendant had been garnisheed by a creditor of Emory Wood, and had paid the money over. But in the present suit this was not, so far as appears, established to have been before some notice of the assignment. Defendant was also prevented by the ruling of the court from showing fraud in the assignment. If the case could stand unreversed upon the other matters we should wish to consider whether a garnishee who has disclosed and paid over money to creditors would not be entitled, when sued on the same debt, to show that the assignment was not valid as against the creditors who garnisheed him and who had, if it was fraudulent, a right to complain themselves of the assignment. While we do not find ourselves called on to pass upon this allegation of error, we do not wish to have it understood that it is regarded as unfounded. We leave it for future consideration.

We think the jury was clearly misled by the course taken below on the subject of infants' contracts. While the court in the charge did undoubtedly charge that the plaintiff must show the horse to have been a necessity to the defendant, the force of this was destroyed by the other charges and refusals to charge. The plaintiff, although the defendant appeared only as an infant and his infancy was admitted, made no attempt to do any more than prove the sale of the horse as if made to a person of full age. When he rested he had made out no cause of action. If he recovered at all it could only be because the defendant (who was very unnecessarily called on by whoever represented his interests to show by way of defence what the law presumed in his favor) made out a clear case of necessity. The fact that the defendant assumed the burden did

not in any way exonerate plaintiff from making out a full case of actual necessity. The burden did not cease to be the plaintiff's burden. Defendant showed that he was carrying on his mother-in-law's farm for a third of the produce, and that she was to furnish all the teams, tools and implements. He had no other business. This showed quite clearly that the horse was not necessary for defendant, and the court should not have refused to so charge. By refusing this charge and by giving the jury to understand, as we think they could not fail to understand, that it was the necessity for the farming business, and not the necessity for the defendant's part in it that would make him liable, they were led to a verdict which has no testimony to sustain it. We have had some doubt whether we could properly grant a new trial upon the reversal. The defendant was not brought into the case so as to be impleaded in the way the statute points out. The guardian does not, on the original record, appear to have been properly appointed, and he, and not the defendant, had charge of the original defence and appeal. We are strongly inclined to regard the whole proceedings as too defective to bear investigation. Defendant did not assign error on this point, but it is open on the record, where the issues indicate error, and may stand in the way of any future judgment for plaintiff. As the assignments of error now stand we shall reverse the judgment with costs of both courts up to this time and allow a new trial, if the plaintiff sees fit to incur the risk.

The other justices concurred.

If the wants of an infant be supplied by his parent, guardian or by any other person, he cannot render himself liable for articles which would otherwise be necessaries: *Bainbridge* v. *Pickering*, 2 Wm. Black. 1325; *Gay* v. *Ballou*, 4 Wend. 403; *Rivers* v. *Gregg*, 5 Rich. Eq. 274; *Guthrie* v. *Murphy*, 4 Watts 80; *Angel* v. *McClellan*, 16 Mass. 31; *Pool* v. *Pratt*, 1 Chip. 253; *Beeler* v. *Young*, 1 Bibb 521; *Connolly* v. *Hull*, 3 McCord 6; *McKanna* v. *Merry*, 61 Ill. 180; *Nicholson* v. *Wilborn*, 13 Geo. 475; *Elrod* v. *Myers*, 2 Head. 33; *Perrin* v. *Walson*, 10 Ind. 451. Where the minor resides with his parents, it will, in the absence of proof to the contrary, be presumed that he is properly supplied with necessaries: *Connolly* v. *Hull*, 3 McCord 6; *Jones* v. *Colvin*, 1 McMull. 14; *Perrin* v. *Wilson*, 10 Mo. 451; *Freeman* v. *Bridges*, 4 Jones' Law 4. Indeed, infancy being shown, the burden of proof is with the plaintiff to show that the articles sued for were necessary for the infant: *Thrall* v. *Wright*, 38 Vt. 494; *Nicholson* v. *Wilborn*, 13 Geo. 475. And this is so whether the articles sued for come within the class of necessaries or not: *Thrall* v. *Wright*, *supra*.

An examination of the cases above referred to can not but convince the reader that the decision in the principal case is entirely correct.

It may not be unprofitable to refer to some other cases illustrating the general

principles that should be applied in every case where the question of necessaries is involved.

The first question to be determined in every case appears to be whether the articles sued for come within the general class of necessaries, and this is a matter of law to be judged of by the court: *Beeler* v. *Young*, 1 Bibb 521; *Glover* v. *Ott*, 1 McCord 572; *Bent* v. *Manning*, 10 Vt. 230; *Tupper* v. *Cadwell*, 12 Met. 563; *Grace* v. *Hale*, 2 Humph. 29; *Stanton* v. *Nillson*, 3 Day 57; *McKanna* v. *Merry*, 61 Ill. 178, *Jordan* v. *Coffield*, 70 N. C. 110; *Merriam* v. *Cunningham*, 11 Cush. 40. The articles in question must not only come within the general class of necessaries in law, but must also be in fact necessary to the infant under the particular circumstances in which he is placed: Reeves' Dom. Rel. *227. The preliminary question above stated being determined, if the articles fall within the general class of necessaries, then whether they were actually necessary and suitable to the condition and estate of the infant, and of reasonable prices, must regularly be left to the jury as matter of fact: Bing. on Inf. 86, note 1, 87; Story on Sales, sect. 35; *Beeler* v. *Young*, 1 Bibb 521; *Bent* v. *Manning*, 10 Vt. 230; *Grace* v. *Hall*, 2 Humph. 29; *McKanna* v. *Merry*, 61 Ill. 178; *Jordan* v. *Coffield*, 70 N. C. 110; *Merriam* v. *Cunningham*, 11 Cush. 40; *Stanton* v. *Willson*, 3 Day 57; *Ryder* v. *Wombwell*, L. R., 3 Exch. 90; s. c., L. R., 4 Exch. 32. This proposition is subject to the qualification that the question whether or not there is any evidence fairly tending to show that they were actually necessary is for the court; and if there is no such evidence, the case may be withdrawn from the jury; but the weight of evidence, if there is any, is for the jury. The verdict is also subject to be set aside as being contrary to the weight of the evidence. See *Ryder* v. *Wombwell*, L. R., 4 Exch. 32. In this case the question as to what are not necessaries in law, and hence are to be excluded from the consideration of the jury, was much considered, and the case as a whole is a very interesting one. In the court of exchequer the court was evenly divided as to what is the proper rule; but upon appeal to the exchequer chamber a conclusion was arrived at in accordance with the rule already stated, and it was unanimously held that there was not in the case evidence on which the jury could reasonably find that it was necessary for maintaining the defendant in the station of life in which he moved, either that he should give a silver goblet worth 15*l*. 15*s*. to a friend, or wear shirt buttons composed of diamonds and rubies, costing 12*l*. 10*s*. a piece. See, also, *Brooker* v. *Scott*, 11 M. & W. 43; *Bryant* v. *Richardson*, L. R., 3 Exch. 93, note; *Wharton* v. *Mackenzie*, 5 Q. B. 606; *Peters* v. *Fleming*, 6 M. & W. 56; s. c. Ewell's Lead Cas. 56, where the subject will be found further considered.

The rule as to what constitutes necessaries is believed to have been correctly stated in *Peters* v. *Fleming*, *supra*, though doubtless in this country many would differ from the court in its application to the facts of that case. In that case PARKE, B., laid down the rule thus: "All such articles as are purely ornamental and are not necessary are to be rejected, because they cannot be requisite for any one, and for such matters, therefore, an infant cannot be made responsible. But, if they are not strictly of this description, then the question arises whether they were bought for the necessary use of the party in order to support himself properly in the degree, state and station of life in which he moved; if they were for such articles the infant may be responsible. That must be a question for the jury, and it is for them to decide, upon due consideration, whether the articles were of such a description or not." See, also, notes to *Peters* v. *Fleming*, Ewell's Lead. Cas. 68, where the cases are fully collected.

MARSHALL D. EWELL.

Chicago.